

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DAVID FLOYD, *et al.*,

08 Civ. 01034 (SAS)

Plaintiffs,

-against-

**DECLARATION OF
JEFFREY FAGAN**

THE CITY OF NEW YORK, *et al.*,

Defendants.

JEFFREY FAGAN declares as follows pursuant to 28 U.S.C. § 1746:

1. I am the Isidor and Seville Sulzbacher Professor of Law at Columbia University Law School, a Senior Research Scholar at Yale Law School, and Director of the Center for Crime, Community and Law at Columbia Law School. I am a Fellow of the American Society of Criminology. I have been retained by the Plaintiffs in this action as a testifying expert.

2. I have previously submitted two expert reports in this case, dated October 15, 2010 ("First Report"), and December 3, 2010 ("Supplemental Report"), respectively. Those Reports state the data I analyzed (see First Report at 6-25; Supplemental Report at 5-14, 30-32, 35-39).

3. I submit this declaration in support of Plaintiffs' motion for class certification, for the purpose of demonstrating that the pattern of suspicionless stops and race-based stops shown in my First Report and Supplemental Report is a City-wide phenomenon, affecting residents in in all areas of the City.

A. Suspicionless Stops

4. As set forth in my First Report, on the basis of my analysis of the UF-250 data for all recorded non-radio-run stops made by the NYPD during the years 2004-2009, I concluded that nearly 150,000, or 6.71%, lack legal justification, and an additional 544,252, or 24.37%, lack sufficiently detailed documentation to assess their legality. *See* First Report at 4, 55-58 & Table 12. I also concluded that the fact that the legal sufficiency of 31% of all stops cannot be shown suggests that the current regime for regulating the constitutional sufficiency of the huge volume of stops is ineffective and insensitive to the actual conduct of stops. *Id.* at 55.

5. These unjustified and legally indeterminable stops occurred in every precinct in New York City. Table 1, annexed hereto, shows, for each precinct, the number of stops that are in the "unjustified" categories set forth on Table 12 of my First report. Table 1 also shows combined results for discretionary stop as well as radio run stops. When radio run stops during the period 2004 and 2009 are included, the number of stops that were classified as unjustified increases to 179,877, or 6.41%. Table 1 shows that those nearly 180,000 stops occurred in every precinct in the City.

6. Table 1 also shows that when I combine radio runs and non-radio Runs, between 2004 and 2009 there were 697,203 stops classified as "indeterminate". Those nearly 700,000 stops are 24.8% of all stops in this period. As also shown on Table 1, these nearly 700,000 stops occurred in every precinct in the City.

7. Thus, as shown on Table 1, my analysis of UF-250 database shows that a total of 877,080 stops, or 31.2% of all stops citywide, are unjustified or of undeterminable legality. Figure 1 shows the percent of “unjustified” and “indeterminate” stops in each precinct from 2004-2009. The height of each bar is the total percent of “unjustified” and “indeterminate” stops in each precinct.

8. The UF-250 form (a copy of which is annexed to my First Report as Appendix B) contains the question “What Were Circumstances Which Led to Stop?” followed by ten circumstances and instructions that the officer “MUST CHECK AT LEAST ONE BOX”. The last box is “Other Reasonable Suspicion of Criminal Activity (Specify)”. There is then a list of ten “Additional Circumstances/Factors” and instruction to “Check All That Apply”.

9. Annexed hereto as Table 2 is a chart that shows that for 62,437 stops during the period 2004-2009, no reason or factor was cited in the UF-250 other than “Furtive Movements”. These 62,437 (2.2% of all stops) occurred in every precinct in the City. Table 2 also shows that for 4,152 stops, no explanation was provided in the UF-250 other than the Additional Circumstance of “High Crime Area.” These “High Crime Area”-only stops occurred in every precinct in the City between 2004 and 2009. Table 2 also shows that in 998 stops, the only “Stop Circumstance” checked was “Additional Circumstance – Other”. This pattern occurred in every precinct in the City between 2004 and 2009. Finally, Table 2 shows that in 17,924 stops, no “Stop Circumstance” was checked and only “Additional Circumstances” were checked. These nearly 18,000 stops occurred in every precinct in the City between 2004 and 2009.

B. Racial Disparities in Stop Activity

10. As set forth in my First and Supplemental Reports, throughout the City, NYPD stops were significantly more frequent for Black and Hispanic persons than for White persons, after adjusting stop rates for the precinct crime rate, racial composition, allocation of police resources, and other social and economic factors predictive of police activity. Blacks and Latinos are more likely to be stopped than Whites even in areas where there are low crime rates and where residential populations are racially heterogeneous or predominantly White. *See First Report at 40-47 & Tables 7-10.*

11. This is a Citywide phenomenon. After controlling for precinct characteristics including crime conditions, racial population composition, patrol strength, and other socioeconomic and land use characteristics, Blacks and Hispanics were stopped more often than Whites across the City's police precincts. *See id. at 40-47 & Tables 7-10; see also id. at 30-40.*

12. To demonstrate the commonality of these disparities across the City's police precincts, the same statistical analyses shown in my First Report at Table 7 were repeated with varying percentages of NYPD stop activity included in each iteration. The City was divided into 10 groups, each representing 10% of the City's police precincts (i.e., deciles) ranked by stop activity, as measured by the ratio of stops to total crime complaints. See Table 3 annexed hereto. The analyses were completed first for the full sample (column 1 in Table 3). Then, the statistical analyses were repeated excluding, in order from left to right in the table, incremental 10% portions or deciles of the City's police precincts based on the ratio

of stops to crime in each precinct. Column 2 of Table 3 shows results excluding the 10% of precincts with the highest stop-to-crime ratio; Column 3 shows the results excluding the 20% of precincts with the highest stop-to-crime ratio, etc. Column 9, on the far right of Table 3, shows the results of regressions including only the 20% of precincts with the lowest stop-to-crime ratio.

13. As shown in Table 3, in each analysis, Blacks and Hispanics were significantly more likely to be stopped compared to Whites, after controlling for the crime and social characteristics of each police precinct. This is shown in the regression coefficients and statistical significance markers in the first two rows of Table 3. Blacks and Hispanics were statistically significantly more likely to be stopped compared to Whites in all precincts, and in each set of precincts in the successive models. Regardless of whether precincts were in the highest 90 percent of the ratio of stops to crimes or the lowest 20%, or anywhere in between, was high or low, Black and Hispanic citizens were more likely than Whites to be stopped. That is, this pattern of significantly higher stops for Black and Latino persons took place in every precinct in the City between 2004 and 2009.

14. Table 4 annexed hereto shows the percentage of the City's population overall and for Blacks and Hispanics in each of these deciles. Table 4 also shows the specific precincts that are included in each decile of stop-to-crime activity. From this table, the percentage of the City's Black and Hispanic population in each model in Table 3 can be calculated.

15. Column 3 (i.e., the second model) in Table 3, with 90% of the precincts included, excludes the 10th decile. Accordingly, the pattern of significantly

higher stops of Black persons is true in precincts that have 92% of the total population, and 80% of the total Black population of the City. In this analysis, 92% of the City's Hispanic population is included (100%-8%). In the last column on the right side of Table 3, only 20% of the City's police precincts are included. The same pattern of significantly higher stops of Blacks and Hispanics is observed in those precincts. Those precincts contain only 13% of the City's Black population and 21% of the City's Hispanic population. See, *ESRI Data and Maps, 2006*, <http://support.esri.com/en/knowledgebase/whitepapers/download/fileid/4082>

16. By disaggregating the population composition in each analysis in Table 3, I conclude that the finding of significant higher stops of Black and Hispanic persons during the period 2004-2009 is evident in all parts of the City, regardless of their racial composition, or their crime and other social condition.

C. Stop Activity in 2010 and the First Half of 2011

17. Based on data provided by the NYPD from its Stop and Frisk Database, stop activity since 2009 continues to take place at the same or higher rates as in the 2004-2009 period. Specifically, the NYPD made 601,285 stops in 2010, and 362,231 stops in the first six months of 2011, a total of 962,516 stops in 18 months.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: 6 November 2011
New York, New York



JEFFREY FAGAN

Table 1. Stop Justifications by NYPD Precinct, 2004-2009 (N, %)

		Number		Percent	
		<i>Indeterminate</i>	<i>Unjustified</i>	% <i>Indeterminate</i>	% <i>Unjustified</i>
Citywide	<u>Total Stops</u> 2,805,721	<u>697,203</u>	<u>179,877</u>	24.8%	6.41%
Precinct					
1	11,169	1,803	419	16.1%	3.8%
5	15,643	4,242	734	27.1%	4.7%
6	15,454	3,503	519	22.7%	3.4%
7	22,856	6,931	1,392	30.3%	6.1%
9	24,532	6,100	1,354	24.9%	5.5%
10	20,394	4,402	1,089	21.6%	5.3%
13	21,590	4,307	1,450	19.9%	6.7%
14	52,200	9,601	2,600	18.4%	5.0%
17	7,812	1,862	481	23.8%	6.2%
18	14,778	3,336	771	22.6%	5.2%
19	27,094	5,146	1,713	19.0%	6.3%
20	17,171	3,535	854	20.6%	5.0%
22	4,428	945	217	21.3%	4.9%
23	77,894	31,103	6,454	39.9%	8.3%
24	19,207	4,502	1,051	23.4%	5.5%
25	38,045	11,157	2,761	29.3%	7.3%
26	25,783	6,346	1,341	24.6%	5.2%
28	39,938	10,636	2,185	26.6%	5.5%
30	34,516	6,034	3,801	17.5%	11.0%
32	55,803	15,559	5,630	27.9%	10.1%
33	27,197	4,778	2,634	17.6%	9.7%
34	36,455	6,055	2,970	16.6%	8.1%
40	76,555	27,014	6,767	35.3%	8.8%
41	28,518	6,032	2,422	21.2%	8.5%
42	42,099	13,031	4,926	31.0%	11.7%
43	46,267	16,861	3,394	36.4%	7.3%
44	46,295	13,510	5,630	29.2%	12.2%
45	16,043	3,583	1,040	22.3%	6.5%
46	35,152	8,289	6,085	23.6%	17.3%
47	36,041	10,901	3,425	30.2%	9.5%
48	20,120	3,935	2,394	19.6%	11.9%
49	25,554	4,940	2,210	19.3%	8.6%
50	14,012	2,764	652	19.7%	4.7%
52	31,242	9,426	2,263	30.2%	7.2%
60	33,271	8,461	1,363	25.4%	4.1%
61	29,683	5,208	888	17.5%	3.0%
62	25,962	3,946	2,272	15.2%	8.8%

63	18,384	4,596	860	25.0%	4.7%
66	21,837	4,042	1,133	18.5%	5.2%
67	45,378	12,459	2,554	27.5%	5.6%
68	14,431	2,719	1,251	18.8%	8.7%
69	29,796	7,512	1,077	25.2%	3.6%
70	55,074	16,238	2,628	29.5%	4.8%
71	27,321	6,980	1,569	25.5%	5.7%
72	22,419	4,756	937	21.2%	4.2%
73	124,005	44,913	10,532	36.2%	8.5%
75	169,727	44,444	10,710	26.2%	6.3%
76	25,385	7,496	904	29.5%	3.6%
77	63,370	12,136	3,087	19.2%	4.9%
78	13,534	3,102	661	22.9%	4.9%
79	95,043	25,936	4,168	27.3%	4.4%
81	45,307	10,237	2,437	22.6%	5.4%
83	41,467	7,868	1,527	19.0%	3.7%
84	18,000	4,336	1,009	24.1%	5.6%
88	37,187	8,089	1,730	21.8%	4.7%
90	49,828	11,724	2,461	23.5%	4.9%
94	14,258	3,549	545	24.9%	3.8%
100	15,515	4,249	393	27.4%	2.5%
101	46,565	14,563	2,824	31.3%	6.1%
102	32,856	7,114	1,160	21.7%	3.5%
103	86,994	19,687	5,438	22.6%	6.3%
104	38,589	6,744	1,867	17.5%	4.8%
105	43,543	9,133	1,307	21.0%	3.0%
106	36,475	5,961	1,910	16.3%	5.2%
107	29,993	5,716	1,675	19.1%	5.6%
108	33,068	5,904	969	17.9%	2.9%
109	42,862	7,870	1,400	18.4%	3.3%
110	46,192	8,338	4,321	18.1%	9.4%
111	21,252	2,305	471	10.8%	2.2%
112	16,162	3,033	551	18.8%	3.4%
113	38,942	10,235	2,869	26.3%	7.4%
114	54,299	13,518	5,430	24.9%	10.0%
115	50,846	9,957	2,581	19.6%	5.1%
120	71,640	21,402	3,176	29.9%	4.4%
122	36,211	6,079	1,324	16.8%	3.7%
123	15,193	2,479	280	16.3%	1.8%

The percentages in this table are based all stops, including stops made pursuant both Radio Runs and non-Radio Runs. The percent with incomplete documentation among Radio Runs is 5.26, and the percent with incomplete documentation among non-radio runs is 6.71. The composite is 6.41%.

**Table 2. High Crime Area and Furtive Movement Stop Justifications
by Stop Frequency, 2004-2009**

	Total Stops	High Crime Area Only	Furtive Movements Only	AC_Other only	AC's only (No CS's)
Citywide	2,805,721	4,152	62,437	998	17,924
Precinct					
1	11,169	10	60	6	50
5	15,643	14	205	2	72
6	15,454	38	56	6	125
7	22,856	41	488	5	162
9	24,532	37	328	16	150
10	20,394	52	206	9	262
13	21,590	25	276	12	155
14	52,200	45	570	16	321
17	7,812	2	75	5	22
18	14,778	4	110	8	81
19	27,094	38	590	12	153
20	17,171	31	129	10	122
22	4,428	6	14	1	78
23	77,894	183	2,455	31	520
24	19,207	17	242	3	84
25	38,045	86	1,029	27	268
26	25,783	28	481	1	142
28	39,938	80	737	11	333
30	34,516	95	1,322	23	411
32	55,803	44	3,004	23	159
33	27,197	39	1,076	9	290
34	36,455	61	1,128	22	221
40	76,555	118	3,053	32	597
41	28,518	14	1,296	5	76
42	42,099	59	2,430	14	213
43	46,267	41	1,039	15	179
44	46,295	49	1,516	26	207
45	16,043	13	351	5	97
46	35,152	13	3,549	3	60
47	36,041	74	1,110	19	263
48	20,120	23	1,146	3	99
49	25,554	40	1,086	5	126
50	14,012	18	157	7	125
52	31,242	25	716	22	181
60	33,271	39	350	11	171
61	29,683	57	119	7	206

62	25,962	7	717	5	131
63	18,384	20	266	6	167
66	21,837	47	214	6	144
67	45,378	63	893	18	330
68	14,431	18	285	5	86
69	29,796	37	278	8	159
70	55,074	74	601	29	367
71	27,321	46	379	15	305
72	22,419	55	134	17	180
73	124,005	74	3,571	17	256
75	169,727	396	3,624	77	1,636
76	25,385	29	123	10	118
77	63,370	99	951	10	452
78	13,534	14	64	3	149
79	95,043	100	1,315	14	366
81	45,307	80	894	7	244
83	41,467	12	482	5	47
84	18,000	17	174	2	74
88	37,187	4	638	12	74
90	49,828	96	513	23	253
94	14,258	4	82	2	40
100	15,515	11	49	6	75
101	46,565	100	1,001	11	490
102	32,856	47	204	18	296
103	86,994	271	1,734	49	913
104	38,589	107	502	15	334
105	43,543	71	282	11	328
106	36,475	69	283	7	312
107	29,993	76	688	11	221
108	33,068	62	198	7	219
109	42,862	53	364	32	320
110	46,192	38	2,719	7	251
111	21,252	6	49	11	75
112	16,162	7	68	6	93
113	38,942	90	895	17	292
114	54,299	44	2,860	20	199
115	50,846	117	443	11	494
120	71,640	88	1,008	22	351
122	36,211	30	352	13	241
123	15,193	14	41	1	61

**Figure 1. Percent Indeterminate and Unjustified Stops,
NYPD Precincts, 2004-9**

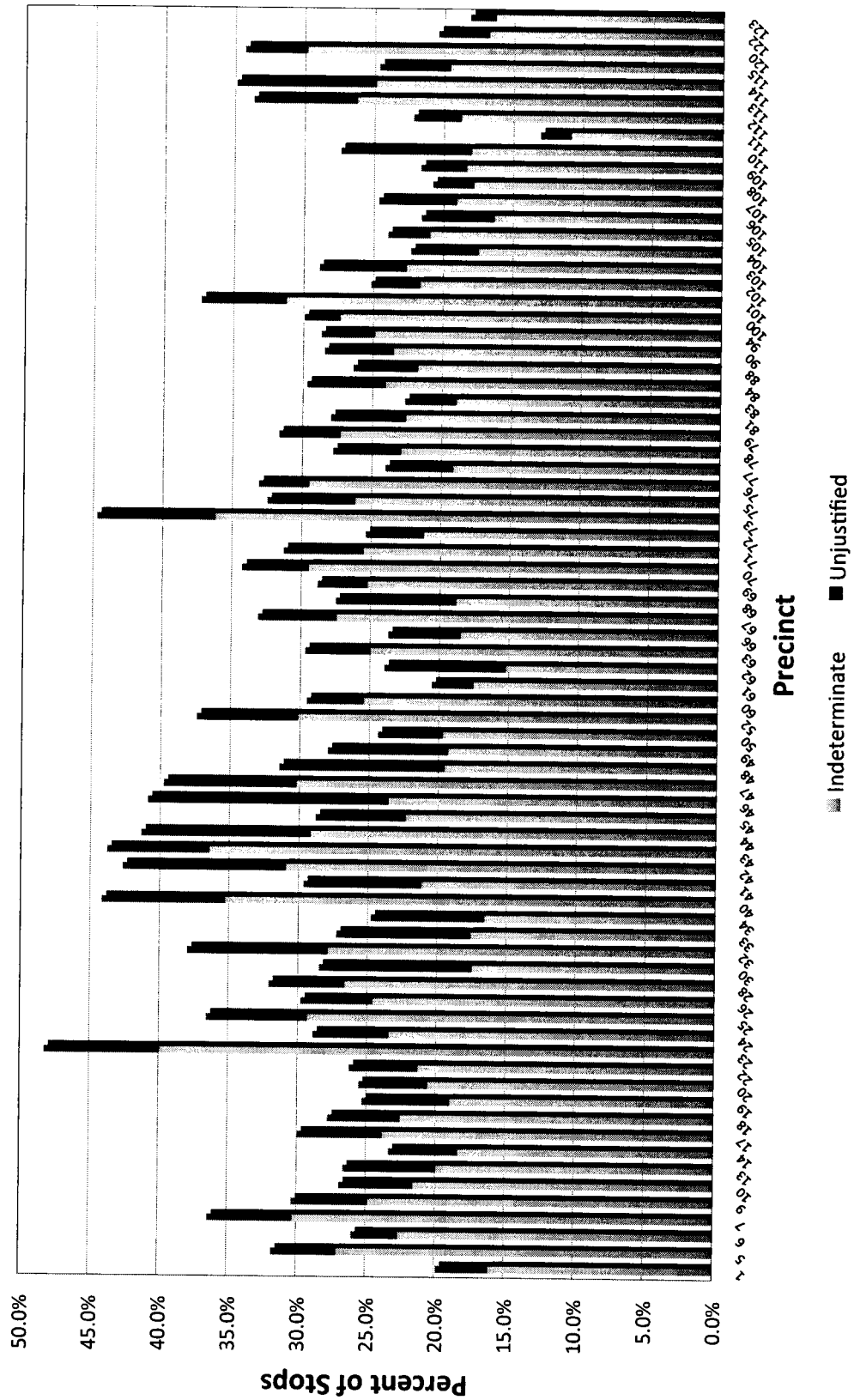


Table 3. Multilevel Poisson Regression on Stops by Suspect Race and Precinct Socio-Economic and Crime Conditions in Prior Calendar Quarter 2004-9,
By Stop per Crime Ratio Deciles (b, SE, p)^a

Race-Group Characteristic ^b	Percent of Precincts Included by Decile								
	All Precincts	0-90%	0-80%	0-70%	0-60%	0-50%	0-40%	0-30%	0-20%
Blacks	1.613 *** [.002]	1.259 *** [.002]	1.094 *** [.002]	.949 *** [.002]	.886 *** [.003]	.910 *** [.003]	.686 *** [.003]	1.139 *** [.004]	1.301 *** [.006]
Hispanics	1.070 *** [.002]	.970 *** [.002]	.887 *** [.002]	.682 *** [.003]	.647 *** [.003]	.551 *** [.003]	.473 *** [.003]	.825 *** [.004]	1.106 *** [.006]
Others	-.281 *** [.003]	-.429 *** [.003]	-.468 *** [.003]	-.528 *** [.003]	-.688 *** [.004]	-.788 *** [.004]	-.979 *** [.005]	-.673 *** [.006]	-.580 *** [.009]
Precinct Characteristics									
Total Complaints (logged, lagged)	.257 *** [.063]	.450 *** [.064]	.599 *** [.063]	.673 *** [.067]	.785 *** [.071]	.825 *** [.074]	.575 *** [.088]	.793 *** [.105]	.672 *** [.141]
Percent Black	.935 *** [.076]	.589 *** [.076]	.213 ** [.082]	.156 [.081]	-.071 [.089]	-.073 [.099]	.022 [.129]	.086 [.155]	-.125 [.503]
Percent Hispanic	.565 *** [.107]	.311 ** [.106]	.191 [.105]	.072 [.109]	-.188 [.114]	-.374 ** [.132]	-.283 [.151]	-.394 * [.196]	-.793 * [.363]
Percent Other	.731 *** [.150]	.372 * [.145]	-.115 [.146]	-.133 [.145]	-.302 * [.151]	-.435 * [.183]	-.173 [.200]	.024 [.218]	-.1944 * [.950]
Low SES Factor	-.011 [.022]	.003 [.022]	-.058 * [.023]	-.086 *** [.024]	-.034 [.025]	-.033 [.028]	.039 [.039]	.036 [.046]	.080 [.068]
% Foreign Born	.133 [.159]	.542 *** [.155]	1.307 *** [.165]	1.566 *** [.175]	1.466 *** [.179]	1.280 *** [.212]	.585 * [.235]	.675 * [.342]	-.065 [.548]
Patrol Strength	.003 *** [.000]	.002 *** [.000]	.002 *** [.000]	.001 *** [.000]	.001 ** [.000]	.001 ** [.000]	.001 * [.000]	.001 [.000]	.001 ** [.000]
Population (logged)	.104 * [.044]	.021 [.043]	-.031 [.043]	-.076 [.044]	-.126 ** [.045]	-.151 ** [.047]	.229 ** [.076]	.177 * [.082]	.384 * [.164]
Business Precinct	-.442 *** [.073]	-.414 *** [.070]	-.444 *** [.068]	-.381 *** [.067]	-.431 *** [.067]	-.460 *** [.068]	-.263 *** [.078]	-.248 ** [.081]	-.105 [.104]
Seasonality Parameters ^c									
q1	.333 * [.146]	.350 * [.160]	.369 * [.164]	.358 * [.168]	.363 * [.173]	.350 * [.173]	.357 [.184]	.390 * [.197]	.354 * [.179]
q2	.167 [.139]	.183 [.153]	.216 [.156]	.216 [.160]	.206 [.165]	.206 [.165]	.177 [.176]	.217 [.188]	.204 [.171]
q3	.032 [.139]	.032 [.153]	.043 [.156]	.038 [.160]	.042 [.165]	.049 [.165]	.042 [.176]	.075 [.188]	.076 [.171]

a. Statistical Significance: * p < .05, ** p < .01, *** p < .001

b. Whites are reference group

c. Q4 (Oct-Dec) is reference group

Table 4. Population by Police Precinct Deciles by Stop:Crime Ratio, 2004-9

	Included Precincts	Combined		Black		Population		% of Total		Hispanic		Population		% of Total		Total Stops		% of Total	
		Population	% of Total	Population	% of Total	Population	% of Total	Population	% of Total	Population	% of Total	Population	% of Total	Population	% of Total	Total Stops	% of Total	Total Stops	% of Total
Citywide		8,270,859	100%	2,012,646	100%	2,463,016	100%	2,805,721	100%										
Stop:Crime Decile																			
1	1, 6, 13, 17, 18, 45, 48, 68	665,282	8%	61,836	3%	149,534	6%	121,397	4%										
2	24, 43, 46, 50, 52, 63, 84	814,568	10%	200,174	10%	367,607	15%	182,264	6%										
3	5, 9, 19, 44, 47, 49, 71, 122	1,072,248	13%	273,671	14%	246,330	10%	238,691	9%										
4	20, 61, 62, 72, 78, 112, 123	834,126	10%	28,967	1%	153,948	6%	140,124	5%										
5	10, 14, 41, 66, 67, 94, 102, 113	798,774	10%	291,348	14%	172,593	7%	254,383	9%										
6	7, 33, 42, 60, 104, 107, 109	900,362	11%	92,754	5%	286,876	12%	236,867	8%										
7	69, 83, 100, 105, 106, 108, 111, 114	1,022,158	12%	251,211	12%	271,023	11%	275,415	10%										
8	25, 30, 34, 40, 70, 115, 120	847,472	10%	197,284	10%	395,701	16%	363,131	13%										
9	26, 28, 32, 76, 81, 88, 90, 110	617,582	7%	214,426	11%	212,894	9%	325,423	12%										
10	23, 73, 75, 77, 79, 101, 103	698,288	8%	400,977	20%	206,510	8%	663,598	24%										

Decile breakdown omits 4,428 stops made in Central Park (22nd Pct)

Population computed from 2006 American Community Survey, U.S. Census Bureau, using ESRI's Demographic Update Methodology: 2006/2011